

Steven M. Bessette  
Appl. No. 09/633,621  
September 29, 2003

### **REMARKS/ARGUMENTS**

Claims 9, 24 and 25 are pending. Claims 9, 24 and 25 have been amended to encompass infringing subject matter. Solely in an effort to advance prosecution, claims 8, 31, 37 and 38 have been cancelled without prejudice to, or disclaimer of, the subject matter they contain. Claims 10-23, 26-30, 32-36, 39 and 40 have been withdrawn in view of a restriction requirement and will be cancelled upon an indication of allowable subject matter or rejoined with the pending claims if deemed appropriate. No new matter has been added.

#### **The Rejections Under 35 U.S.C. §102(b)**

The Office Action rejects claims 8, 9 and 25 under 35 U.S.C. §102(b) as allegedly being anticipated by Grier (U.S. Patent No. 3,678,168). Applicant respectfully traverses the rejection to the extent it applies to the presently claimed invention and for at least the following reasons.

Grier discloses compositions for inhibiting bacteria fungi and nematodes. In particular, Grier teaches nitroalkyl-piperazines as being the active agents in the disclosed compositions. Grier merely teaches that benzyl alcohol may be used as a solvent for compositions containing the disclosed nitroalkyl-piperazines. More importantly, Grier does not teach that benzyl alcohol is an active agent of the disclosed composition, which has selected on the basis of its pesticidal activity against beetles, as required by the claimed invention. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection.

The Office Action also rejects Claim 37 under 35 U.S.C. §102(b) as allegedly being anticipated by Ishikawa (U.S. Patent No. 4,443,439). Applicant respectfully traverses the rejection to the extent it applies to the presently claimed invention and for at least the following

**BEST AVAILABLE COPY**

Steven M. Bessette  
Appl. No. 09/633,621  
September 29, 2003

reasons. In reply, Applicant respectfully submits that claim 37 has been cancelled solely in an effort to advance prosecution, thereby rendering this rejection moot.

### **The Objection**

Claims 24, 31, and 38 stand objected to as allegedly being dependent upon a canceled base claim. In response, Applicant respectfully submit that the rejected claims are independent claims that do not depend from any claim, let alone claim 1. Reconsideration and withdrawal of the objection are respectfully requested.

### **CONCLUSION**

If any issues remain outstanding or if an Examiner's amendment could be made to advance prosecution (e.g., an Examiner's Amendment), then Applicants respectfully invite the Examiner to contact the undersigned representative at the telephone number listed below.

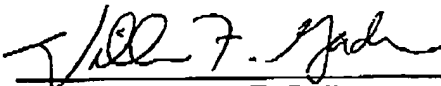
Please grant any extensions of time deemed necessary for entry of this communication. Please charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any other paper filed in this application by this firm), or credit any overpayment of fees, to Deposit Account No. 14-1140

**BEST AVAILABLE COPY**

Steven M. Bcssette  
Appl. No. 09/633,621  
September 29, 2003

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:   
Willem F. Gadiano  
Reg. No. 37,136

WFG:ewm  
1100 North Glebe Road, 8th Floor  
Arlington, VA 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100

**OFFICIAL**

**RECEIVED  
CENTRAL FAX CENTER**

**SEP 29 2003**

**BEST AVAILABLE COPY**